

Appl. No. 09/715,586
Docket No. 5922R2C
Amdt. dated January 5, 2007
Reply to Office Action mailed on November 7, 2006
Customer No. 27752

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REMARKS

Claim Status

Claims 1, 9-12, 14-18, 41, 47-52, 54-58, 66, 81, 95, 97-103, and 105-108 are pending in the present application. No additional claims fee is believed to be due.

Rejection Under 35 U.S.C. §103

Claims 1, 9-11, 14-18-11, 14-18, 41-51, 54-58, 66, 81, 95-99, and 101-107 have been rejected under 35 U.S.C. §103(a) over Wilbur, U.S. Patent No. 2,338,749 in view of Sanders, U.S. Patent No. 5,344,693, and further in view of the admitted prior art. Applicant respectfully traverses this rejection and requests reconsideration and withdrawal of the Office's 35 U.S.C. §103(a) rejection based upon the following additional comments:

To establish a *prima facie* case of obviousness under 35 USC §103(a), the Office must provide a reference, or combination of references, that teach or suggest each of the limitations of the invention as claimed. Applicant submits that the references cited by the Office do not teach or suggest all of the claimed limitations and therefore fail to support a *prima facie* case of obviousness under 35 USC §103(a). Specifically, the references fail to teach or suggest a material that is activatable by the application of a tensile force to the material and has the claimed flexibility and resilience.

In this instance, the Office admits that *Wilbur* does not teach a structure which is activatable by the application of a tensile force. The Office posits that the claimed feature is "clearly optional" and therefore need not be taught by the prior art. Applicant respectfully requests that the Office explain this position as nothing in the plain language of the independent claims suggests that this feature is optional.

The Office provides that the structures taught by the *Sanders* reference inherently possess the claimed feature of being activatable in response to an applied tensile force. Inherency requires that a feature must necessarily be present, or arise from the teachings of the reference. References must be taken as a whole.

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The *Sanders* reference provides that the invention is characterized by spacing means which are non-divergent relative one to another in normal use (col. 1 line 66 – col. 2 line 2). Taken as a whole, *Sanders* does not teach a web material capable of activation when subjected to a tensile force as such activation would require spacing means which are necessarily divergent relative one to another during normal use. Combining the non-divergent spacing means of *Sanders*, with *Wilbur* does not provide a teaching of a structure which is activatable by the application of a tensile force to the structure despite any similarity of appearance found between the illustrations of the reference and the instant application. The structure of the invention is claimed as activatable upon the application of a tensile force. The structure of *Sanders* is defined as being non-divergent in spacing upon the application of a tensile force. This is not a similar structure and there is no basis in the teachings of the reference to support a claim of inherency as the claimed feature is not necessarily present.

The Office also admits that *Wilbur* does not teach or suggest a web which is conformable and has a small resiliency. Applicant claims a web which will conform readily to a desired surface and having sufficiently small resiliency that it does not exert undue restorative forces that would tend to cause said sheet of material to break contact with such a desired surface. The Office points to a combination of *Wilbur* and cling wrap as providing the support for an obviousness rejection regarding this element. To combine references in support of a rejection under 35 USC §103, there must be a reasonable expectation of success in the combination. The Office provides that this expectation arises because *Wilbur* and *Sanders* each teach protrusions, *Wilbur* teaches the use of flexible paper or the equivalent, and *Sanders* teaches the use of embossed polyethylene film.

Applicant respectfully submits that this argument does not support the contention that a monolayer cling film may be modified by the addition of sufficient stiffness to allow it to retain an embossed shape and possess the non-divergent spacing means required by the *Sanders* reference, further modified by the addition of a continuous layer of adhesive and yet retain its original degree of high conformability and low resilience.

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The combination of the flexible nature of cling wrap with the structures of *Wilbur* and *Sanders* for the purposes of this Office Action is not done with any reasonable expectation of success and should be withdrawn as a supporting basis for any rejection under 35 USC §103.

Applicants submit that the cited combinations do not teach or suggest each of the limitations of the invention as claimed. The combinations do not support a rejection under 35 USC §103(a). The rejection should be reconsidered and withdrawn.

Respectfully submitted,

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